STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-152

March 27, 2002

PUBLIC UTILITIES COMMISSION
Amendment to Rule, Metering, Billing, Collections and Enrollments Interactions Among Transmission and Distribution Utilities and Competitive Electricity Providers (Chapter 322)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Notice, we initiate a rulemaking to consider amendments to Chapter 322 (metering, billing, collections and enrollments) that would require utilities to provide billing and collection services to aggregators and brokers. We also propose several minor changes that result from a legislative change to the definition of small customers and from our experience in implementing the rule.

II. BACKGROUND

On December 5, 2001, Competitive Energy Services, LLC and the Maine Electric Consumer Cooperative (CES/MECC) requested that the Commission adopt an emergency rule that would require utilities to segregate that portion of the money collected from customers for competitive electricity service that represents a fee for aggregator or broker services and transfer that money to the aggregator or broker. The CES/MECC request resulted from the financial collapse of Enron, which jeopardized their ability to collect aggregation fees that were embedded in customer charges for generation service.

On January 8, 2002, the Commission denied the CES/MECC request for an emergency rulemaking, finding that the emergency rulemaking standard was not satisfied, that the requested action would impinge on the jurisdiction of the bankruptcy court, and that the CES/MECC proposed rule change would require alterations of existing contractual relationships. *Order Denying Request for Emergency Rulemaking,* Docket No. 2001-839 (Jan. 8, 2002). Although we expressed our reluctance to interfere with existing contracts, we stated that it would be appropriate to consider whether utilities should be required prospectively to bill for fees for aggregator and broker services, and that we would do so in a future rulemaking proceeding. *Id.* at 3. Accordingly, we initiate this rulemaking to consider the matter of utility billing of aggregator and broker fees through proposed amendments to Chapter 322 of our rules.

III. PROPOSED AMENDMENTS

A. Aggregator and Broker Billing

The proposed rule would require utilities to provide billing services for aggregators and brokers through the addition of a new sub-section H to section 3 of the rule. Section 3 governs consolidated utility billing for the provision of generation service, and the proposed new sub-section H mirrors these billing requirements in many respects. The proposed amendment would require utilities, upon the request of an aggregator or broker, to calculate and issue bills for their services. As is currently the case for consolidated billing for generation service, the proposed rule would require that utilities charge aggregators or brokers the incremental cost of providing the billing service, and that the charge be included in a Commission-approved term and condition. The proposed rule also states that utilities shall develop a standard contract for the provision of aggregator and broker billing, but specifies that parties may agree to differing contract terms. Disputes over contract terms can be submitted to the Commission for resolution. Finally, as with consolidated billing, the proposed rule specifies that past due charges owed to a prior aggregator or broker will be collected by the utility for one bill following the final bill for the prior aggregator or broker service. We request comment on whether the rule should include a mechanism that allows for verification that the customer consented to the aggregator or broker billing arrangement.

The proposed rule does not include the detailed provisions on bill content or format, bill calculation or the transfer of funds that are currently included in sections 3, 4, and 6 of Chapter 322 for consolidated billing of generation service. We have not included such provisions because the varied nature of aggregator and broker services may render specific billing rules in certain areas inappropriate. We have thus left many details to the contracting process between the utility and the aggregator or broker. The proposed rule does, however, include amendments to the agency billing (Section 3(G)) and non-generation related services or products billing (Section 4(E)) provisions of the rule so as to place aggregators and brokers in the same position as generation service providers.

The proposed rule also contains an addition to section 6(C) of the rule to address partial payments in circumstances in which utilities are billing for aggregators or brokers. The proposed rule specifies that if the utility is billing for aggregator or broker service, but not for generation service, the allocation occurs as specified in the rule among utility charges and competitive electricity provider charges. In the event that the utility is billing for both generation service and aggregator or broker service, the utility would allocate the competitive electricity provider portion of the partial payment equally between the generation service provider and the aggregator or broker, unless these entities agree in writing to a different allocation among themselves. We seek comment on an alternative in which the competitive provider portion is allocated between the generation provider and aggregator or broker in proportion to the respective amounts owed. We also seek comment on whether the partial payment approach in the proposed rule could provide unfair leverage to an aggregator or broker in disputes with

customers in that a legitimate refusal to pay an aggregator or broker bill would automatically result in an underpayment for the generation services bill (which may not be disputed).[1]

B. Miscellaneous Amendments

Maine's Restructuring Act, as initially enacted, applied certain consumer protections only to customers with a demand of 100 kW or less. Chapter 322 currently has several provisions that reference this 100 kW threshold (sections 3(G), 7(A)1, 8(A)). However, subsequent to the promulgation of Chapter 322, the Legislature amended the threshold for the consumer protections by requiring the protections to apply to "residential and small commercial consumers." P.L. 1999, ch. 657. The amending legislation included specific definitions of residential and small commercial customers. As a result, we propose to remove the references in the current rule to the 100 kW threshold and replace them with language consistent with the amended statute. The language in the proposed rule refers to "small non-residential customers" as opposed to "small commercial consumers" because this is the terminology used in our other rules; however, the definition of the term that we have include in section 1 of the proposed rule is the same as that in statute.

We also propose to amend Section 10 of the rule to remove the requirement that contracts between the utility and a competitive electricity provider that conform to a Commission-approved standard form be filed with the Commission. Our experience to date indicates that this requirement is unnecessary.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on May 1, 2002 at 10:00 a.m. at the Public Utilities Commission. Written comments on the proposed Rule may be filed with the Administrative Director until May 13, 2002. However, the Commission requests that comments be filed by April 29, 2002 to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 99-659, and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Public Utilities Commission if special accommodations are needed in order to make the hearing accessible by calling 287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

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[1] One approach that might address this issue would be for the rule to state that the utility billing of aggregator or broker fees shall terminate upon the request of either the customer or the aggregator or broker. Please comment on whether such a provision should be included in the rule.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed Rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

Accordingly, we

O R D E R

1. That the Administrative Director shall notify the following of this rulemaking proceeding:

   a. All electric utilities in the State;

   b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

   c. All licensed competitive electricity providers.

2. That the Administrative Director shall send copies of this Notice of Rulemaking and attached proposed rule to:

   a. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

   b. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, this 27th day of March, 2002.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.